

UTAH AIR QUALITY BOARD MEETING
June 6, 2007

FINAL MINUTES

I. Call to Order

Ernest Wessman called the meeting to order at 1:37 p.m.

Board members present:

Ernest Wessman	Nan Bunker	Dianne Nielson
Wayne Samuelson	Kathy Van Dame	Darrell Smith
Craig Petersen		

Excused: Stead Burwell, Jim Horrocks, Don Sorensen, Steve Sands

Executive Secretary: Rick Sprott

II. Date of the Next Air Quality Board Meetings

July 11, 2007 and August 1, 2007.

III. Approval of the Minutes for May 2, 2007 Board Meeting

Mr. Wessman made note of several grammatical corrections needing to be made.

- Darrell Smith made the motion to approve the minutes with changes proposed by Mr. Wessman. Nan Bunker seconded. The Board approved unanimously.

IV. Discussion of Issues Raised by Utah Physicians for a Healthy Environment. Presented by Ernie Wessman and Rick Sprott.

Mr. Wessman stated that during the May board meeting they accepted an offer that Rick Sprott, Fred Nelson, and he meet to look at the statutory requirements in how to proceed with consideration of a health related issue regarding the air regulations. The draft was sent to the Board for review.

Mr. Sprott explained that they tried to capture the essence of the Board discussion following the presentation last month. They began with solicitation of information with respect to pollution in Utah and health data. In consultations with other medical authorities they attempted to get a sense of how this kind of an endeavor might take shape, the kinds of skills one might be interested in, and the composition of an independent panel. They felt an independent group would be necessary so that the Board would have an independent evaluation and assessment of health effects. The attempt was to begin at the major steps that might be involved in the process and establish a rough time estimate that might be involved in this effort. One suggestion was to try and as accurately as possible scope this effort and focus it because what the Board is really doing is replicating an effort that people take years to do in the EPA structure. There needs to be a thorough examination of literature and technical data. It will be a pretty hefty task so the better that the Board, with the Division's assistance, gets it to a manageable scope. If there's a need to look at multiple pollutants, it's best to do that in steps

Mr. Wessman stated that in order to develop the plan they looked at the statutory authorities. With particular attention to 19-2-106 rulemaking authority and procedure, paragraph two. That paragraph lays out the requirements about when the Board may make rules more stringent. In developing the plan we tried to make sure that each one of those requirements were addressed in a manner that would ensure that by the time written records were developed, the evidence compiled, public comment and hearing held, and an opinion developed referring to the public health and environmental information, then that body of information would be of a nature that the Board could act on it, make its decision, and then be consistent with the statutory requirement.

Ms. Van Dame stated that she received advice and comments that the health science panel needed to have the flexibility to determine what information it was that they needed to come to a conclusion. Ms. Van Dame's idea is that the Board would figure out what they want the science panel to do and accept nominations to the science panel. The science panel would then get a task and the science panel then decides how it is going to meet that task.

Ms. Nielson asked Ms. Van Dame to explain the differences in what she is proposing.

Ms. Van Dame answered that the question that needs to be asked is are the health standards that are being administered right now adequate to meet the guidelines of the legislation. The recommended plan says that, "the Board, with the input of the staff, define the scope of pollutants and data to be considered..." Ms. Van Dame thinks that a science panel is more qualified to determine what data is to be considered. By telling the science panel what data they can consider, we've already narrowed their results. In order to get the best result the science panel should make the request for whatever data it is that they need to evaluate to answer the questions that we post.

Ms. Nielson asked for clarification. Ms. Nielson interpreted the Board's role as writing the charge for the science panel. To which Ms. Van Dame agreed. Ms. Nielson then went on to state that her interpretation was that the Board was writing the charge that they are expecting from the science panel. Ms. Nielson commented on the statement mentioned earlier that the ability to determine whether standards ought to be more stringent would be a huge time and cost intensive process as opposed to determining whether the best things possible were being done right now to achieve the standards or even being below the standards. In other words, figuring out what needs to happen to get us under the standard and be protective of public health and children's health on a regular basis as opposed to evaluating whether a standard ought to be more stringent.

Mr. Petersen commented to Ms. Van Dame that essentially her point is whether or not the health panel is appointed after the request for data has been out or whether or not the health panel participate in the formal data request.

Ms. Van Dame stated that whatever the Board decides as the charge of the panel the science panel needs to be able to figure out what data they need to answer the questions.

Mr. Petersen stated the way this reads now is that the Board would issue a comprehensive formal information request. He thinks that what Ms. Van Dame is suggesting is that one should appoint the health panel and the health panel should assist in formulating the formal information request. To which Ms. Van Dame agreed and stated that it may be to meet the requirements of legislation that it's necessary that whatever data request is made is made by the Board.

Mr. Sprott asked for clarification that Ms. Van Dame was referring to the first sentence, "The Board define the scope of pollutants and data to be considered." He then went on to explain that sentence comes out of consultation with physicians and their request that the Board help them in terms of some

kind of hierarchy. In other words, peer review literature is the most highly desirable kind of data. They wanted some help in ensuring that they didn't have to consider tons of paper and that was the intent with the sentence.

Mr. Wessman stated that to address Kathy's concern the Board appoint the independent panel. The panel would work with the Board, as well as DAQ staff, to find the scope and recommend to the Board the data to be considered.

Dr. Samuelson stated that it's going to be critical because science has progressed to the point we know of more things that are harmful in the atmosphere. The critical question is do we have the technology to do something about it. If we're going to have practical results from this panel, it's important that the scope of the panel's responsibility be defined such that we're going to address questions for which we can currently get answers. The technology is available, or close to being available, to effect a lot of improvement as stated from our last meeting from one of the professors at the University of Utah. Dr. Samuelson believes that should fall within the scope of the panel, but in terms of some degree of practicality that we can only do things that are feasible right now.

Ms. Bunker stated we need to make sure the panel understands that it's a preliminary report. That everything the panel comes back with may not be what we can do right now because it may not fit statutorily or practically. That the panel doesn't go into it with the idea that whatever they say, that's it. They need to know up front that there will be a lot of discussion as to what they have put down.

Mr. Wessman agreed and stated the first step is to try to sort out the question created in paragraph 2 about, "written finding after public comment and hearing and based on evidence in the record, that corresponding federal regulations are not adequate to protect public health and the environment of the state." The panel would need to determine whether or not the regulations are adequate.

Dr. Samuelson stated that Ms. Van Dame's point is well taken that we don't want to constrain the panel.

Mr. Wessman stated the intent was not to constrain the panel but rather under the statute the Board has to be in charge of this process. The Board cannot simply turn it over to a panel and then have the panel come back with a completed product.

Ms. Nielson recommended creating a new number 1 recommendation that just stated the Board will establish the charge for the panel. Number 2 recommendation would stay the same but that the original number 1 would become number 3 with added wording such as, "it would be the Board in conjunction with the panel and input from DAQ staff..."

Ms. Van Dame stated the first thing that we need to figure out is whether or not the current rules are adequate. She is concerned that the Board not be too fixed on the difficulty of remedies before the Board finish with the diagnosis of the problem.

Mr. Wessman stated that it's important to determine is there a problem or are the existing or pending rules adequate. We also have to sort out problems that are linked to air quality. It's going to be important for the record to have some indication about other causal factors at work. The Board heard from the physicians that there is no threshold; what does that carry for implications of what can be managed; what are the unintended consequences. We have to allow the panel to consider issues that result in a balanced and objective and complete record for the Board to act upon without getting bogged down. We have to be careful not to wind up with an incomplete record that then would be challenged and perhaps delay the process.

Mr. Smith asked if this Board has been charged in the past with anything of similar scope and complexity that the timeline given would be adequate.

Ms. Nielson stated that there are two similar instances that have been done in the Water Quality Board. Ms. Nielson believes the Board could recognize that this is the first proposed schedule and after the science panel were in place and had a chance to make some recommendations in terms of the effort involved, they could reconsider the schedule and amend it. It would be good to get feedback from the panel because it's a balance of the time needed for the review, good recommendations, and recognition to be able to implement some actions in a timely manner.

Mr. Wessman stated the schedule information does say estimated schedule and through the process of the minutes of this meeting the Board would acknowledge that the schedule is tentative until the panel has a chance to work it through.

Mr. Petersen asked about the value of having specific panels on specific tasks or specific pollutants because the timeframe is pretty ambitious to come back with a report.

Mr. Wessman stated that given the significant effort involved a phase approach may be necessary. The Board can let the panel set up their organization to the best effect. The Board does not want to fetter the panel in what they do, but the message the Board got was that this is pretty urgent.

Ms. Nielson stated it might be helpful for the Board to provide some advice on PM2.5 since that is the principle air pollutant that we deal with in the summer.

Mr. Wessman stated the Board could say preliminary information received indicates that PM2.5 is probably a high priority and the panel should consider that.

Ms. Nielson stated that she would be willing to entertain the Board ask the panel to look at PM2.5 and ozone as priorities.

Dr. Samuelson stated in response to Mr. Petersen's plan, that it's important to note the Utah Physicians for Clean Air made this point pretty emphatically that a great deal of information is currently in published literature and it won't take long to read it. He thinks that what the Board is asking the panel to do is look at what is available and respond and that it's reasonable to have an ambitious schedule. New investigations may be another issue and perhaps that is something the panel could let the Board know about.

Mr. Wessman stated one of the key points from the statutory authority paragraph is that the Board needs to make sure that any interested parties are invited to provide information that is relevant as well as to have a public hearing before conclusions are drawn. Mr. Wessman then went on to recap the Board's suggestions. Add a number 1 recommendation for the Board to develop a charter for the independent panel of health and science experts. Number 2 recommendation would be below the number 1 as just described. The current number 1 recommendation then becomes number 3 and perhaps to get the involvement of the panel on this, it could say, "the Board, with the input of the panel and DAQ staff."

Mr. Wessman then asked Ms. Van Dame if those changes addressed her concerns. To which she agreed.

Ms. Van Dame next suggested that the Board specifically ask the panel to make recommendations as far as monitoring enhancements. This was suggested to Ms. Van Dame by Dr. Richard Kanner as something that might be useful that the panel do in addition to the original number 4 recommendation.

Mr. Sprott stated that this panel will be a medical panel and the monitoring network is a different set of technical skills. That it would be inappropriate for this particular group to take that one on. Health facts and the monitoring system are two different things. The Air Quality website has the latest update for the monitoring network and anyone who chooses to make recommendations for the coming year can do so through the website.

Mr. Petersen commented to Mr. Sprott referring to the panel as a medical panel and the text describes it as a health and science. He was thinking of it as something broader than just health professionals.

Mr. Sprott stated it would be health and science panel. The first task is evaluating health effects, data with respect to the PM2.5 standard. That is different than determining through modeling, meteorology, and topography, where the most appropriate places are for monitors and how many. EPA has a detailed and thorough procedure for how many monitors are required.

Mr. Wessman then asked Ms. Van Dame if she was comfortable with Mr. Sprott's explanation about monitoring. To which Ms. Van Dame responded that as the panel evaluates literature and Utah specific data, they could identify needs that are not obvious. She doesn't doubt that the Air Quality Board will be open to anything the health and science panel has to say to the Board and so modifying the language is not necessary.

Ms. Van Dame next suggested that if it happens that the science panel finds that there are indeed health impacts, and the Board finds that they don't have the authority to fix the problem, then the Board not just stop at that point but that they consider ways to effectively communicate them to citizens and to public officials. That the Board figure out a way to say we should be doing this or we're required to do this but that we don't have the authority. She wanted the Board to be aware that they may find themselves in that situation.

Mr. Wessman suggested this addition to the original number 6 recommendation, "that in the event the Board concludes certain actions need to be taken that are beyond it's authority it will communicate the issue to the legislature."

Ms. Van Dame stated that some of the authority rests with zoning districts, the legislature, or with the governor. That in those instances when the Board does not have authority then the Board needs to communicate that fact to citizens. She then stated that if the Board is comfortable with the language that she proposed, that's fine. If the Board would prefer not to have the language in it and just content themselves with the fact that she raised the issue, that is also fine.

Mr. Wessman stated that the fact that the minutes should reflect the concerns brought up to the Board, we can keep that going through that means.

Mr. Sprott asked for clarification and stated that to him the statute is clear that the Board can take whatever steps that are necessary as long as the finding of impact to human health occurs. To which Ms. Van Dame agreed. Mr. Sprott stated to his understanding what Ms. Van Dame is asking for is even if there is no health impact, if there is some other impacts such as nuisance, that she thinks that the Air Quality Board should have the authority to pass rules regulating that.

Ms. Van Dame stated that isn't the scenario she imagined. One scenario she imagined is confined animal feeding operations (CAFO) which may have levels of PM2.5 that are problematic to people in rural areas. It is her understanding that industrial sized CAFO have not been regulated because they have been covered underneath agricultural exemptions. To which Mr. Sprott responded that there is no

such exemption in our rules and laws in Utah and his concern is as they move forward there is an open ended intent here that leads us into areas like nuisance.

Mr. Wessman stated that as he referred in 19-2-106 paragraph 2 that if there is an identified health impact related to air quality, even if it's not addressed by the federal regulations, that the Board can do it once they have findings based on clear evidence that the problem exists. Mr. Wessman then stated that he got the sense from several people that it's probably not necessary to insert language that to the effect, "if we don't have authority then we'll take other action."

At this time public comments were heard.

Mr. James O. Kennon with Sevier Citizens for Clean Air and with Save Our Air and Resources asked about how the information regarding the previous discussion was going to be made available to the public.

Ms. Cherise Udell with Utah Moms for Clean Air stated that through her research, dollar for dollar renewable energies actually create higher paying and more jobs than nonrenewable energies.

Mr. Stewart Smith with Big West Oil Company asked about the funding mechanism, the allocation of resources within the agency, and if resources be diverted from other tasks for the proposed science panel.

Mr. Sprott stated that they will probably be looking for people to serve on a voluntary basis and that it's part of the Division's normal operation to consider actions of the Board.

- Craig Petersen moved that the Board adopt the proposal with the changes that have been suggested today. Nan Bunker seconded. The Board approved unanimously.

Mr. Wessman addressed Mr. Kennon's comment about how to make the information available to the public and how nominations for the panel will be handled. Mr. Sprott suggested sending input to the Executive Secretary made available on the Air Quality website.

V. Informational Items.

A. US EPA Regional Air Program. Presented by Callie Videtich, Air and Radiation Program Director.

Ms. Videtich introduced herself to the Air Quality Board and discussed her priorities in working with the states in the region. Through partnership and clear and ongoing dialog with the Boards, the states, and the people that we work with in the communities, can we move forward and affect the health and environmental issues of each individual state.

B. Environmental Best Management Practices for Construction Sites. Presented by Sonja Wallace.

Ms. Wallace, Pollution Prevention Coordinator at DEQ, explained that the Department put together a workgroup made up of representatives of each Division to determine the major concerns with the various media programs. One of the results was the brochure, Best Management Practices for Construction Sites. Ms. Wallace then went on to describe the brochure and answered questions.

C. Update on Climate Change. Presented by Dianne Nielson and Rick Sprott.

Mr. Sprott presented each Board member with a compact fluorescent light bulb to state that this is one of the best ways to be energy efficient, reduce consumption, and reduce greenhouse gas emission.

Mr. Sprott stated that last summer the Governor impaneled a Blue Ribbon Advisory Council for Climate Change. The group has approximately 24 representatives from a variety of sectors, public and environmental groups. The group has been reviewing ideas for policy recommendations and strategies to reduce greenhouse gases with an anticipated conclusion the end of August. The Governor asked for a science report on the current state of the science on the intermountain west and recommendations in what Utah should be doing; with specific considerations for the economic impacts of those recommendations.

Ms. Nielson stated that Utah is now involved with two initiatives which will contribute to work that has already been done. These initiatives will be consistent with objectives in term of facilitating a process to enable business, individuals, state governments, and federal agencies in Utah to be able to contribute in reducing greenhouse gases, reducing pollution, and improving efficiency in the use of resources.

Ms. Nielson stated the first of those initiatives is the climate registry. There are now 33 states, 3 Canadian provinces, and the State of Mexico who have joined in this effort. The objective of the registry is to be able to establish a baseline in terms of emissions of greenhouse gases, make improvements in their operations that reduce the amount of greenhouse gas, and to be able to get credit for those reductions. Industry is anxious to make sure that, in addition to doing the right thing and if there were going to be programs that would track and recognize the improvements, they get credit for the changes through a process consistent from state to state.

Ms. Nielson stated the second initiative is the Western Climate Initiative, formerly the Western Regional Climate Action Initiative, which is made up of 6 states and the Province of Manitoba. In February this group signed a memorandum to be able to take an active role in managing and reducing greenhouse gases. Utah is recognizing that the energy efficiency actions and initiatives the Governor has adopted at this point are the first step in reducing greenhouse gases. The expectation is that we will work through the BRAC in conjunction with the legislature and other partners to be able to develop and implement the strategies that will make a difference in Utah.

D. Compliance. Presented by Harold Burge and Jay Morris.

E. Air Toxics. Presented by Robert Ford.

F. Monitoring. Presented by Bob Dalley.

Mr. Dalley updated the Board on the latest air monitoring data and indicated that the new monitoring network plan has been posted for public review and is available on the homepage.

Ms. Van Dame asked how an ozone day is determined. Mr. Dalley responded that they look at current daily values, temperatures, and the forecast of the next days temperatures and anticipated ozone concentrations. If we are near the standard an ozone alert and then an action and alert day are issued. The goal is to have the public take action prior to violating the standard.

Ms. Van Dam asked how long the monitoring plan is out for public comment, have previous plans gone out for comment, and how is the public notified. Mr. Dalley responded the 30 day public comment period began on May 29th, this is a new rule by EPA so previous plans did not go out for public review, and notices are currently only identified on the Air Quality homepage.

VI. Recognition and Farewell to Dianne Nielson. Presented by Ernie Wessman.

Mr. Wessman presented Ms. Nielson with a plaque from the Air Quality Board expressing appreciation for her time serving on the Board.

Mr. Wessman announced Rick Sprott's promotion to Executive Director of the Department of Environment Quality.

Mr. Sprott announced that Cheryl Heying will be the new Director of Air Quality effective June 9th.

Meeting was adjourned at 3:07 p.m.